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Filing date: **06/09/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91177234
Party	Plaintiff Cardinal Health 303, Inc.
Correspondence Address	Joseph R. Dreitler Bricker & Eckler LLP 100 S. Third Street Columbus, OH 43215-4291 UNITED STATES mtrue@bricker.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Mary R. True
Filer's e-mail	trademarks@bricker.com
Signature	/Mary R. True/
Date	06/09/2009
Attachments	1Chiero Notice_pdf.pdf (25 pages)(412200 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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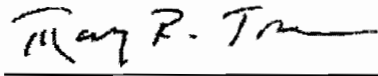
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|------------------------------|---|------------------------------|
| 1. CARDINAL HEALTH 303, INC. | : | |
| Opposer | : | |
| v. | : | Opposition No.: 91-177,234 |
| THE ALARIS GROUP, INC. | : | |
| Applicant | : | |
| | : | |
| 2. CARDINAL HEALTH 303, INC. | : | |
| Opposer | : | |
| v. | : | Opposition No.: 91-177,365 |
| THE ALARIS GROUP, INC. | : | |
| Applicant | : | |
| | : | |
| 3. CARDINAL HEALTH 303, INC. | : | |
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| Applicant | : | |
| | : | |
| 5. CARDINAL HEALTH 303, INC. | : | |
| Petitioner | : | |
| v. | : | Cancellation No.: 92-048,172 |
| THE ALARIS GROUP, INC. | : | |
| Registrant. | : | |

NOTICE OF RELIANCE PURSUANT TO 37 C.F.R. § 2.122(e)

Opposer /Petitioner Cardinal Health 303, Inc., gives notice of its reliance on the attached Declaration of David Chiero and supporting exhibits, which are being submitted and relied upon to show the use of products bearing the Alaris trademarks in the home health care market and the potential for overlap with the services offered by Applicant/Registrant.

Dated: June 9, 2009

Respectfully submitted,

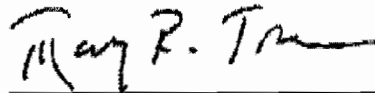
By: 
Joseph R. Dreitler
Mary R. True
BRICKER & ECKLER LLP
100 S. Third Street
Columbus, Ohio 43215
Telephone: (614) 227-2347
Facsimile: (612) 227-2390
Email: jdreitler@bricker.com
mtrue@bricker.com

Attorneys for Opposer
Cardinal Health 303, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon the following attorney of record for Applicant by electronic and First Class Mail, this 9th day of June 2009:

Kristine Boylan
Merchant & Gould
3200 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402
kboylan@merchantgould.com

A handwritten signature in black ink, appearing to read "Mary R. True", written over a horizontal line.

Mary R. True

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	:	
Petitioner	:	
	:	
v.	:	Cancellation No. 92-048,172
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THE ALARIS GROUP, INC.	:	
	:	
Registrant	:	

STIPULATED TESTIMONY OF DAVID CHIERO

Pursuant to the Stipulation of April 29, 2009, between the parties as to means of taking testimony, filed with the TTAB and in accordance with the TTAB Rules of Procedure, I, David Chiero, state that as a witness for Opposer/Petitioner, if called I would testify as follows:

1. I am the Director, Deployment Leader, Clinical Technologies and Services, Cardinal Health 303, Inc. San Diego, CA, and have held this position since May, 2008.

2. I have been employed by Cardinal Health 303, Inc. San Diego, CA and its predecessors in interest (the "Company") since May 1996. During my time at the Company I have been personally and extensively involved in the development of the Alternate Site (non-hospital) market for Alaris products.

3. I have held the following positions at Cardinal Health 303, Inc. San Diego, CA and its predecessors in interest:

- a. Lean Six Sigma Black Belt
- b. Director of Marketing – Infusion Systems
- c. Product Manager

4. When the Company first began producing its medical products, the market for them was more directed to hospitals and acute-care facilities. However, over the years the Company has expanded its line of products sold under the Alaris trademark from infusion therapy devices and accessories to computerized systems that monitor a patient's vital signs, insure that exact dosages of drugs and other fluids are administered to the patient and monitored, and make those monitoring results available to various health care professionals on computer networks also sold under the Alaris trademark by the Company.

5. It is also worth noting that in addition to the Company expanding the Alaris medical product line, the Company offers various medical services under the Alaris trademark, including technical support for its products, clinical support for practitioners, biomedical and other training seminars for clinical personnel, onsite medical instrument repairs, preventative maintenance programs, and consulting services to help customers implement and manage their medication safety systems.

6. As the Alaris medical product and services line has expanded since 1997, so too has the potential market for Alaris products.

7. With the aging population requiring health care services, there are more and more patients in retirement homes, assisted living facilities, long and short term care facilities, and more patients receiving in-home health care, all of whom have need for the

Company's Alaris medical products and services. These types of health care settings are referred to by the Company as Alternate Sites.

8. For example, many patients begin receiving care in hospitals that use Alaris medical products and services administered by doctors, nurses and technicians. Over time, many of these patients improve enough to be discharged from the hospital, but still require care in rehabilitation facilities or at home. These patients may still need the types of infusion therapies and vital sign monitoring provided by the Company's Alaris products. For example, the Company's Alaris ReadyMed device, in particular, was marketed as appropriate for in-home care. Likewise, Alaris-branded disposable accessories that are used with the Company's infusion and monitoring products are also widely used in Alternate Site locations.

9. The Company has studied this expanding market for Alaris products and services, and from 1996 through early 2000 the Company made a strong effort to focus and expand the sales of Alaris products and services into these markets. During this time frame, the Company's sales of these products grew from \$500,000 per year to over \$25 million in annual sales. Attached hereto as Exhibit A is the Alternate Site Strategic Plan I put together in 1997 which describes my analysis of this market and the Company's plan for growth.

10. The Company's Alaris products are and will be used on patients of all types, of all ages suffering from a wide variety of ailments, injuries and diseases.

11. The Company promotes its products and provides training on their proper use to health care workers of all types, including doctors, nurses and technicians and pharmacists.

12. For this reason, it is likely that health care employees of Applicant/Registrant, The Alaris Group, Inc. have and will use the Company's Alaris medical products on patients they are treating and caring for in both home care and rehabilitation facilities.

13. In addition, it is very likely that when personnel of Applicant/Registrant seek to solicit business in the rehabilitation field, that the persons they speak with will assume that there is a connection between the Company and the services Applicant/Registrant provides under the name Alaris.

14. For example, attached hereto as Exhibit B is the website page which I downloaded for Livingston Memorial Visiting Nurse Association and Hospice describes how this organization offers "a variety of home health services ranging from rehabilitation to infusion therapy to palliative care to hospice care." This is a perfect example of how my Company's Alaris medical products – which are the leader in infusion therapy – could be used in the home rehabilitation setting by someone from "Alaris" – the Applicant/Registrant's "medical consulting services in the field of medical and vocational rehabilitation."

15. Similarly, the cost of purchasing one of my Company's Alaris infusion pumps for use in the home care setting is usually paid for by health insurance. It is my understanding that Applicant/Registrant's Alaris medical consulting services are also frequently paid for and overseen by health insurance carriers.

16. Given that many of my Company's Alaris products are frequently used in a home care setting for patients, there is a great likelihood that my Company's products

and services will be used on many of the same patients who are being treated by employees of Applicant/Registrant.

17. The trend in medicine is to encourage more in-home health care, including the care which involves infusion therapy of the type provided by my Company's Alaris products. As noted in the attached online article of the Infectious Disease Society of America (IDSA) (Exhibit C), the 2003 Medicare Modernization Act mandated coverage for home infusion drugs, and the 2009 Medicare Home Infusion Therapy Coverage Act (S. 254 and HR 574) would cover infusion-related professional services under Medicare Part D.

18. Many hospitals now offer home infusion therapy services. Attached are printouts of websites from several hospitals detailing these services (see Exhibit D). Likewise, there are many private companies who provide these services (see Exhibit E). Our sales personnel work with many of these hospitals and private companies to assist them in their purchase of Alaris infusion pumps and other Alaris products.

19. The Infusion Nurses Society ("INS") is an organization of nurses who specialize in infusion therapy in various settings, including homecare. The Company regularly exhibits its products at the INS Annual Meeting. Attached as Exhibit F is information from the 2009 INS Annual Meeting, which indicates that Cardinal Health was in Booth Number 509.

20. Clearly, infusion pumps and monitoring products, such as my Company's Alaris products, are increasingly being used in the home for medical rehabilitation, as are the medical rehabilitation services offered by Applicant/Registrant under the Alaris name.

21. I am also aware that with the internet there is a significant secondary market in the sale of used and refurbished infusion pumps and systems. Attached as Exhibit G is a print-out from a search I conducted on the online auction site e-Bay, in which there were 93 infusion pumps for sale, including an Alaris infusion pump and seven (7) other e-Bay sites selling Alaris brand parts for medical pumps.

22. It is becoming clear that individuals and small re-sellers are purchasing infusion pumps, so that the purchasers of my Company's Alaris infusion and monitoring products are not all sophisticated purchasers.

23. There are many companies selling used and refurbished medical products over the internet to individuals.

24. Attached as Exhibit H is a print-out from a website I went to that is selling used medical pumps, which provides information on what a pump is and how it is used. There is even an online internet video on "How to Set Up an Alaris Infusion Pump in Nursing" at the website www.wonderhowto.com (see Exhibit I).

25. Based on my understanding of the types of services Applicant/Registrant provides under the name Alaris, it is very possible that its employees could use my Company's Alaris infusion pumps and other products.

26. Attached hereto as Exhibit J is a copy of the cover of Life Magazine from May 2000 that prominently displays an Alaris SmartSite valve, a product that is used throughout all healthcare segments. I maintained this magazine cover in my files because it showed the widespread use and recognition of Alaris SmartSite products, and the Company used this magazine cover as part of its promotion of the Alaris brand (see Exhibit K).

6-4-09

Date

David Chiero



Alternate Site Strategic Plan

ALARIS Medical, Inc.
1997

Prepared by: Kevin Maguire and David Chiero

EXHIBIT

tabbles

A



Alternate Site Strategic Plan

ALARIS Medical, Inc.
1997

Prepared by: Kevin Maguire and David Chiero

Notes:



Alternate Site Strategic Plan

Contents

Executive Summary

Alternate Site Market Overview

Home Patient Monitoring/Telemedicine

Alternate Site Infusion

Sales Forecast

Key Initiatives

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Executive Summary

Notes:



Alternate Site Strategic Plan

Purpose:

To grow the sales and profits of ALARIS Medical by becoming a U.S. leader in providing patient care systems which combine patient monitoring, infusion management and telemedicine capabilities, into key alternate site markets.

Notes:



Alternate Site Strategic Plan

Process:

- Take an equity position in a telemonitoring product company and begin distribution of its products through the Alternate Site sales organization.
- Create a new marketing manager position responsible for telemedicine products.

Notes:



Alternate Site Strategic Plan

- Allocate adequate corporate resources to:
 - develop Ramp & Taper into SE in '98
 - develop new fixed-rate gravity sets
 - develop new Chemo ReadyMED
- Provide appropriate resources to assure Alternate Site requirements are included early in the development of all new products, i.e. Orion.

Notes:



Alternate Site Strategic Plan

- Continue to seek outside product acquisition opportunities to fill product line.
 - Low cost LVP
 - Ambulatory pump
 - Flow control gravity sets
- Seek partnerships/alliances/acquisitions with strategic partners in:
 - patient monitoring
 - patient records
 - telemedicine

Notes:



Alternate Site Strategic Plan

Payoff:

- Grow the Alternate Site sales revenue to over \$100 mln. in 5 years.
- Establish ALARIS Medical as a leader in telemedicine patient monitoring systems.
- Provide a more comprehensive solution of products to ALARIS' Health Systems and National Account customers.

Notes:



Alternate Site Market Overview

Notes:



Alternate Site Market Segments

Primary

Field Sales

- Home Care
- SNF\Subacute
- IHDN's

Secondary

Corporate Sales

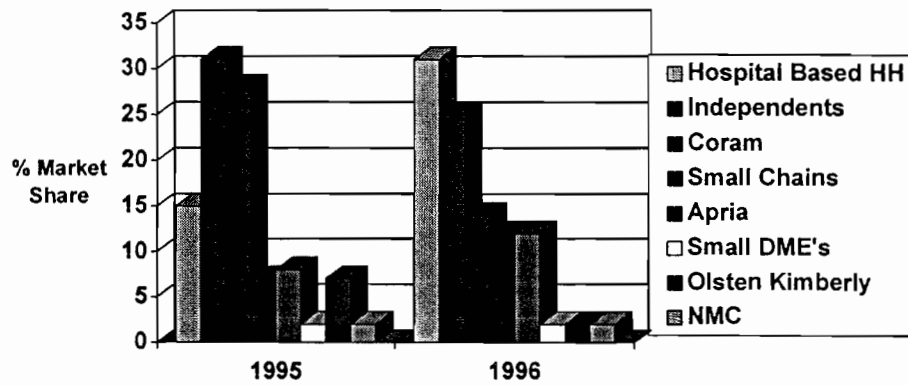
- Emergency Medical Services
- Dialysis Centers
- Ambulatory Surgical Centers
- Hospice
- Physicians Office/Clinics
- Rehabilitation Centers

Notes:



Site of Care Trends

% Market Share of Home Health Agencies



Source: HIDR '96

Notes:



Alternate Site Market Drivers

- Higher acuity patients are being discharged sooner into the Alternate Site segment - driven by Medicare DRG's and Managed Care

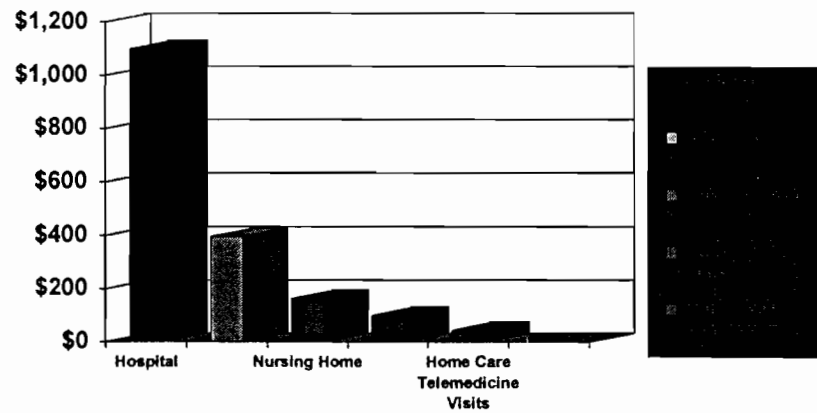
Notes:



ALARIS[™]
MEDICAL SYSTEMS

Comparison of Per Diem Costs by Care Delivery Site

Source-FRS, 1997



Notes: